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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KRISTOFFER PUNONGBAYAN GONZALEZ** 615 Pearson Road Port Hueneme, CA 93041 Registered Nurse License No. 651959 Respondent.	Case No. 2013-472 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (Board).

2. On or about February 3, 2005, the Board issued Registered Nurse License No. 651959 to Kristoffer Punongbayan Gonzalez (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section **118**, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section **2750** provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section **2761** states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

. . . .

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it. . . ."

7. Section **2762** states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with

Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

. . . .

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

8. Section **2764** provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight (8) years after the expiration.

9. Health and Safety Code section **11173** states, in pertinent part:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation , or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division."

10. Health and Safety Code section **11350**, subsection (a) states, in pertinent part:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or

veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

REGULATORY PROVISION

11. California Code of Regulations, title 16, section **1442** states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

COST RECOVERY

12. Section **125.3** provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

13. Section **4021** of the Code states: "Controlled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

14. Section **4022** of the Code states: "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ," "Rx only," or words of similar import, the blank to be filled in 'with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

15. **Dilaudid,** a brand name **Hydromorphone,** is an Opium derivative classified as a Schedule II Controlled Substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J), and categorized as a dangerous drug pursuant to section 4022.

16. **Oxycontin,** a brand name for **Oxycodone (Percocet) ,** is a narcotic used for relief of moderate to severe pain classified as a Schedule II controlled substance pursuant to Health and Safety Code Section 11055 , subdivision (b)(1)(M), and categorized as a dangerous drug pursuant to section 4022.

17. **Morphine**/Morphine Sulfate (extended release **MS Contin**), a narcotic substance classified as a Schedule II controlled substance pursuant to Health and Safety Code Section 11055(b)(1)(L), and categorized as a dangerous drug pursuant to section 4022.

18. **Restoril**, a brand name for **Temazepam**, is a benzodiazepine used for the relief of anxiety, panic attacks and chronic sleeplessness, classified as a Schedule IV controlled substances pursuant to Health and Safety Code Section 11057(d)(29), and categorized as a dangerous drug pursuant to section 4022.

19. **Dolophine**, a brand name for **Methadone**, a narcotic pain reliever, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(14), and a dangerous drug per Business and Professions Code section 4022.

20. **Hydrocodone with Acetaminophen,** also known as **Vicodin or Norco,** is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4), and a dangerous drug within the meaning of Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(False Records)

21. Respondent is subject to disciplinary action under section 2761, subdivision (a), and 2762, subdivisions (a), (b) and (e), on the grounds of unprofessional conduct and falsifying healthcare documents, in that on or about October 1, 2008, through on or about December 1, 2008, while on duty as a registered nurse at Saint John's Medical Center, Oxnard, California (SJMC), Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other record pertaining to controlled substances for patients, as

follows:

a. On or about November 21, 2008, B. H.[1], the Nurse Manager of SJMC discovered that the Respondent withdrew Dilaudid from SJMC's Pyxis[2] dispensary allegedly on behalf of a patient that was not assigned to him. Respondent was never assigned to that patient nor were there physician orders in place authorizing the Respondent to withdraw and administer Dilaudid for this patient. When B.H. questioned the Respondent about the aforementioned withdrawal, Respondent showed the withdrawn Dilaudid by removing it from his lab coat pocket. Respondent claimed that he mistakenly placed the wrong patient identification number in the Pyxis and that he supposedly meant to withdraw the related Dilaudid on behalf of another patient who was assigned to him. Respondent claimed that when he attempted to administer the related Dilaudid to the correct patient, this patient was supposedly asleep, therefore, he then "stored" the Dilaudid in his lab coat pocket, therefore, Respondent would not have to waste it. However, once Respondent realized his patient did not need the medication or that the medication was not ordered for his patient, Respondent should have wasted the medication. Respondent was reprimanded for not following the proper SJMC's protocols via the requirement to waste all unused controlled substances.

b. Respondent violated SJMC's policy and procedures in his possession of Dilaudid in his pocket, his failure to follow the "8 rights[3]" of medication administration, and his failure to properly waste (with witness) said medication.

c. Respondent was placed on investigation suspension and was ordered to submit to a SJMC's drug screening. The screening revealed that the Respondent tested positive for Amphetamines in his drug screen. Accordingly, the Respondent was terminated from SJMC.

d. On or about November 25, 2008, SJHC administration conducted a random audit of

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[1] In order to protect the privacy of the individual, the initials of her first and last name will be used

[2] Pyxis is an automated and computerized medication dispensing system. Medications are placed in the Pyxis machines, which are usually stationed throughout the hospital. These medications can only be accessed or withdrawn by an authorize staff member using their own unique personalized access code. Each medical professional at the hospital is assigned an account number and a "one time only" access code number. The access code number allows the individual to access the Pyxis machine only one time.

[3] One of the rights is the "right documentation"

Respondent's controlled substance and dangerous drug withdrawals from the hospital's Pyxis dispensary. The audit revealed that the Respondent diverted controlled substances from SJMC from approximately October 5, 2008 through November 25, 2008, and did not document twelve (12) controlled substance medications that he removed from the Pyxis machine.

e. The Nurse Manager of SJMC , B.H., reported that Respondent removed two (2) mg of Morphine for a patient that was assigned to a licensed vocational nurse. Said patient had not had any morphine documented or removed for this admission prior to this event. Further, the date the Respondent removed the two (2) mg of Morphine for this patient was the day of patient's discharge. B.H. telephoned the patient in question at home and when asked about the medication she received during her last admission to SJMC, the patient indicated that she did not receive any Morphine, only Percocet for pain. B.H. noted that Morphine removed from Pyxis by the Respondent allegedly for the patient in question, was not documented in the patient's medical record or documented as wasted.

f. Respondent was accepted into the Board of Registered Nursing's Diversion Program (Diversion Program) on or about December 5, 2008. However, he withdrew from the Diversion Program on or about March 12, 2009, without any explanations.

g. Respondent failed to respond to the investigator's (Division of Investigation) multiple attempts to make contact for an interview.

h. **Patient # 83831073**

1) On or about October 17, 2008, at approximately 20:14 hours Respondent withdrew forty (40) mg of Methadone for Patient # 83831073 from SJMC's Pyxis dispensary. However, Respondent made no entries in the patient's MAR[4] or in the nursing notes, and there was no documentation of wastage, therefore the forty (40) mg of Methadone remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are forty (40) mg of Methadone.

[4] Medication Administration Record

i. **Patient # 83800193**

1) On or about October 5, 2008, at approximately 22:11 hours Respondent withdrew two (2) tablets of Oxycodone/APAP 5/325 for Patient # 83800193 from SJMC's Pyxis dispensary. However, he made no entries in the patient's MAR or in the nursing notes, and there was no documentation of wastage, therefore the two (2) tablets of Oxycodone/APAP 5/325 remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are two (2) tablets of Oxycodone.

j. **Patient # 83848697**

1) On or about October 25, 2008, at approximately 5:53 hours, Respondent withdrew two (2) mg of injectable Morphine for Patient # 83848697 from SJMC's Pyxis dispensary. However, he made no entries in the patient's MAR or in the nursing notes, and there was no documentation of wastage, therefore the two (2) mg of injectable Morphine remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are two (2) mg of injectable Morphine.

k. **Patient #83822491**

1) On or about October 22, 2008, at approximately 4:31 hours, Respondent withdrew two (2) tablets of Hydrocodone/APAP 5/500 (Vicodin) for Patient # 83822491 from SJMC's Pyxis dispensary. Respondent documented in the "Daily Patient Assessment Flowsheet" the administration of one tablet of Vicodin on October 22, 2008, at 4:30 hours to Patient # 83822491. However, Respondent failed to document administration in the patient's MAR or in the "Daily Patient Assessment Flowsheet" or any other nursing notes the administration of the one (1) remaining tablet of Vicodin, and there was no documentation of wastage, therefore, one (1) tablet of Vicodin (Hydrocodone/APAP 5/500) remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are one (1) tablet of Vicodin.

l. **Patient #83839944**

1) On or about October 22, 2008, at approximately 21:59 hours, Respondent withdrew 7.5 mg of Temazepam (Restoril) for Patient # 83839944 from SJMC's Pyxis dispensary. However, he made no entries in the patient's MAR or in the nursing notes, and there was no documentation of wastage, therefore the 7.5 mg of Restoril remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are 7.5 mg of Restoril.

m. **Patient #87816660**

1) On or about October 5, 2008, at approximately 6:22 hours, Respondent withdrew one (1) mg of injectable Hydromorphone (Dilaudid) for Patient # 87816660 from SJMC's Pyxis dispensary. However, he made no entries in the patient's MAR or in the nursing notes, and there was no documentation of wastage, therefore, one (1) mg of injectable Dilaudid remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are one (1) mg of injectable Dilaudid.

n. **Patient #83830992**

1) On or about October 23, 2008, at approximately 5:09 hours, Respondent withdrew two (2) mg injectable Morphine for Patient # 83830992. However, he made no entries in the patient's MAR or in the nursing notes, and there was no documentation of wastage, therefore, two (2) mg injectable Morphine remains unaccountable for in any hospital records.

2) On or about October 23, 2008, at approximately 00:50 hours, Respondent withdrew two (2) tablets of Oxycodone/APAP 5/325 for Patient # 83830992. However, he made no entries in the patient's MAR or in the nursing notes, and there was no documentation of wastage, therefore, two (2) tablets of Oxycodone/APAP 5/325 remains unaccountable for in any hospital records.

2) The total discrepancies of the controlled substance for this patient are two (2) tablets of Oxycodone/APAP 5/325 and two (2) mg injectable Morphine.

SECOND CAUSE FOR DISCIPLINE

(Illegally Obtain/Possess Controlled Substances / Dangerous Drugs)

22. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and 2762, subdivision (a), on the grounds of unprofessional conduct, in that on or about October 1, 2008, through on or about December 1, 2008, while on duty as a registered nurse at Saint John's Medical Center, Oxnard, California (SJMC), Respondent obtained or possessed in violation of law controlled substances and dangerous drugs. Complaint refers to and by this reference incorporates the allegations set forth above in paragraph 21, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use)

23. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and 2762, subdivision (b), on the grounds of unprofessional conduct, in that on or about October 1, 2008, through on or about December 1, 2008, while on duty as a registered nurse at Saint John's Medical Center, Oxnard, California (SJMC), Respondent dangerously used controlled substances and dangerous drugs to an extent or in a manner dangerous or injurious to himself or others and/or to the extent that such use impairs his ability to conduct with safety to the public the practice authorized by his license. Complaint refers to and by this reference incorporates the allegations set forth above in paragraph 21, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

24. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that while employed as a registered nurse at SJMC, Respondent demonstrated acts of gross negligence, an extreme departure of repeated acts, as follows:

1) Respondent failed to provide nursing care that ensures no harm to come to one's patients due to failure to properly assess, treat, and/or withhold pain medications without cause and/or for personal reasons. Respondent created potential patient's harm due to incorrect medication administration practices;

2) Respondent obtained and/or possessed controlled substances in violation of law;

3) Respondent tested positive for Amphetamines on his drug screen of November 25, 2008, without having valid prescriptions;

4) Respondent violated SJMC's policy and procedures in his possession of Dilaudid in his pocket, his failure to follow the "8 rights[5]" of medication administration, and his failure to properly waste (with witness) said medication. An ordinary prudent responsible registered nurse is well aware of strict adherence to policy and the severe consequences that improperly handling controlled substances can result. When controlled substances are unaccountable in hospital records, it essentially means diversion;

5) Respondent violated SJMC's policy and procedures in his possession of Dilaudid in his pocket, his failure to follow the "8 rights[6]" of medication administration, and his failure to properly waste (with witness) said medication. When confronted by B. H., the Nurse Manager of SJMC, Respondent had in his pocket Dilaudid he withdrew from Pyxis for a patient he was not assigned to. Respondent did not administer or waste the medication (Dilaudid), as per SJMC's policy and procedures;

6) Respondent failed to follow the proper controlled substance medication administration practices.

Complaint refers to and by this reference incorporates the allegations set forth above in paragraphs 21-23, inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent is subject to disciplinary action under section 2761, subdivision (a), in that Respondent committed acts of unprofessional conduct. Complaint refers to and by this reference incorporates the allegations set forth above in paragraphs 21-24, inclusive, as though set forth fully.

[5] One of the rights is the "right documentation"
[6] One of the rights is the "right documentation"

SIXTH CAUSE FOR DISCIPLINE

(Violation of Nursing Practice Act)

26. Respondent is subject to disciplinary action under section 2761, subdivision (d), on the grounds of unprofessional conduct, in that Respondent violated or attempted to violate, directly or indirectly, the provisions of the Nursing Practice Act as set forth in paragraphs 21-23. Complaint refers to and by this reference incorporates the allegations set forth above in paragraphs 21-25, inclusive, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 651959 to Kristoffer Punongbayan Gonzalez;

2. Ordering Kristoffer Punongbayan Gonzalez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: December 10, 2012

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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